IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 2076 of 2007(V)

PETITIONER:

SHYJIN M.,
SHINE NIVAS, KOLANNOOR, EZHUKON, KOLLAM DISTRICT.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV

RESPONDENTS:
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1. THE CIRCLE INSPECTOR OF POLICE,
KUNDARA POLICE STATION, KOLLAM DISTRICT.

2. LAL, S/O.KARUNAKARAN PILLAI, NEAR VETERINARY
HOSPITAL, PERUMPUZHA P.O., KOLLAM DISTRICT.

3. KALADHARAN, BINDU NIVAS, NEAR VETERINAR
Y HOSPITAL, PERUMPUZHA P.O., KOLLAM DISTRICT.

4. SYAM, THADATHIL VEEDU, NEAR VETERINARY
HOSPITAL, PERUMPUZHA P.O., KOLLAM DISTRICT.

5. MURALEEKRISHNAN, DESA SEVINI LIBRARY,
KAREEPALLY, KOLLAM DISTRICT.

ADDL. 6. THE DISTRICT COLLECTOR, KOLLAM.

" 7. THE ASSISTANT EXCISE COMMISSIONER, KOLLAM.

" 8. ELAMPALLOOR GRAMA PANCHAYAT, REPRESENTED BY ITS SECRETARY, ELAMPALLOOR P.O., KOLLAM.

(ADDL. RESPONDENTS 6 TO 8 ARE IMPLEADED AS PER ORDER DATED 30.1.2007 IN I.A.NO.1202/07)

R1, R6 & R7 BY G.P.SRI.P.A.SALIM
R2 TO R5 BY ADV. SRI.P.B.SURESH KUMAR
R8 BY ADV.SRI.G.BHAGAVAT SINGH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/04/2007, ALONG WITH WPC NO. 4386 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE LICENSE NO.233/2005-06 OF TODDY SHOP NO.18 FOR THE YEAR 2005-06.

EXT.P2: TRUE COPY OF THE ORDER NO.Q4-8174/05 DATED 6.1.2007 ISSUED BY THE ASST. EXCISE COMMISSIONER, KOLLAM.

EXT.P3: TRUE COPY OF THE RELEVANT PAGE OF THE LICENSE SHOWING THE NEW PREMISES DATED 6.1.2007.

EXT.P4: TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 13.1.2007.

EXT.P5: TRUE COPY OF THE ORDER PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DATED 9.2.2007.

EXT.P6: TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BEFORE THE PANCHAYAT COMMITTEE DATED 9.2.2007.

RESPONDENTS' EXHIBITS:

EXT.R2(a): TRUE COPY OF LICENSE NO.285/06-07 ISSUED BY THE PANCHAYAT, DATED 8/11/2006.

EXT.R2(b): TRUE COPY OF THE NOTICE ISSUED BY THE PANCHAYAT DATED 11/1/2007.

EXT.R8(a): PHOTOCOPY OF THE APPLICATION FOR PERMIT DATED 04.11.2006 SUBMITTED BY SUDHAKARAN & SASIKALA BEFORE THE GRAMA PANCHAYAT.

EXT.R8(b): PHOTOCOPY OF BUILDING CONSTRUCTION PERMIT NO.285/06-07 DATED 08.11.06 ISSUED BY THE GRAMA PANCHAYATH.

EXT.R8(c): PHOTOCOPY OF THE NOTICE NO.E2-18/2007 DATED 11.01.07 ISSUED BY THE SECRETARY, THE ADDL. 8TH RESPONDENT TO SHRI.SUDHAKARAN/SASIKALA, ANASWARA, PUNUKKANNUR.

// TRUE COPY //

TKS

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C)Nos.2076 & 4386 OF 2007

Dated 10th April, 2007

JUDGMENT

Koshy,J.

W.P.(C)No.2076 of 2007 is a petition for police protection for conducting a toddy shop. According to the petitioner, he was the licencee and continues to be the licencee as his licence was renewed. He also stated that for the renewal or grant of licence for this year, he had to pay a huge amount as kist and if he is not allowed to function the toddy shop, he has to incur financial loss and members of public have no right to obstruct functioning of the toddy shop.

2. Counsel for the petitioner in W.P.(C)No.4386 of 2007 pointed out that there is an `Anganvadi' within the prohibited distance. Counsel for the Panchayat submitted that earlier a licence was granted to function the toddy shop in a shed. Somehow that shed is demolished and now there is no building. That is a question of fact. According to the petitioner in W.P.(C)No.2076 of 2007, the `Anganvadi' is not an educational institution and, therefore, distance prohibition is not applicable because of the existence of the

Anganvadi. In any event, even if there is any institution and prohibited distance rule is applicable, it is for the parties to approach the Assistant Excise Commissioner or Excise Commissioner as the case may be, but, they cannot take law into their hands. If the petitioner in W.P.(C) No.2076 of 2007 has got licence, already there is a building and petitioner is functioning the toddy shop in accordance with the licence conditions, police is bound to grant necessary protection for functioning the toddy shop. However, if there is no shed at all and it is already demolished, permission of the panchayath is necessary for construction of new building and if now there is no building, there is no question of granting police protection. Since that is a question of fact, we leave the matter to the authorities.

Both writ petitions are disposed of accordingly.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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